



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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Telephone (518) 486-5355

November 26, 2010

Hon. Michael J. Novack
Clerk
Appellate Division, Third Department
P.O. Box 7288
Capitol Station
Albany, NY 12224

RE: Lewis Family Farm v. APA; APA v. Lewis Family Farm
OAG Nos. 08-077232, 08-074861


Dear Mr. Novack:

I represent the APA in the above referenced matters. On November 18, 2010, the APA filed a motion for an extension of 60 days, until January 25, 2011, to perfect its appeal in these matters. The motion is returnable on November 29, 2010. Lewis Farm responded by cross-moving for an extension of time to perfect its cross-appeal.

In its cross motion papers, Lewis Farm mistakenly asserts that the APA served its motion for an extension of time via regular first class mail and failed to provide the requisite 13 days notice under C.P.L.R. §§ 2103(b)(2) and 2214(b). On the contrary, as the attached copy of the affidavit of service of the motion papers indicates, the APA served its motion papers by express mail for overnight delivery and the papers were therefore timely served. See C.P.L.R. § 2103(b)(6). Moreover, although Mr. Lamme does not indicate in his affidavit when he received the APA's motion papers, I can confirm that his client, Mr. Salim Lewis, had a copy in his possession on November 19, 2010. I know this because at 2:05 p.m. on November 19, Mr. Lewis sent me, as well as several other people including APA attorneys and a newspaper reporter, an email and attached a copy of the motion papers to the email.

Based on the foregoing, the APA requests an order granting the relief requested in its motion.

Respectfully submitted,


JULIE M. SHERIDAN
Assistant Solicitor General

cc: Jacob F. Lamme, Esq.
677 Broadway
Albany, New York 12207

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)

) ss:

COUNTY OF ALBANY)

Alvin Kershaw, being duly sworn, deposes and says:

I am over eighteen years of age and an employee in the office of ANDREW M. CUOMO, Attorney General of the State of New York, attorney for Appellant Adirondack Park Agency herein.

On the 18th day of November, 2010, I served **BY EXPRESS MAIL FOR OVERNIGHT DELIVERY** the annexed Notice of Motion and Affirmation upon the attorney named below by depositing a true copy thereof, properly enclosed in a sealed, postpaid wrapper, in a letter box of the Capitol Station Post Office in the City of Albany, New York, a depository under the exclusive care and custody of the United States Post Office Department, directed to the said attorney at the address within the State and respectively designated by him for that purpose as follows:

John J. Privitera, Esq.
McNamee, Lochner, Titus & Williams, P.C.
677 Broadway
Albany, New York 12207

Sworn to before me this

18th day of November, 2010.

William H. Collins
NOTARY PUBLIC

Alvin Kershaw

WILLIAM H. COLLINS
Notary Public, State of New York
Reg. No. 469447
Qualified in Schenectady County
Commission Expires June 30, 2011